

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Nehemiah Kong,

Plaintiff,

v.

Quartz Hill, LLC, a California
Limited Liability Company;
TTDU Corp, a California
Corporation; and Does 1-10,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For** Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act

Plaintiff Nehemiah Kong complains of Defendants Quartz Hill, LLC, a California Limited Liability Company; TTDU Corp, a California Corporation; and Does 1-10 ("Defendants") and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He is a paraplegic who suffers from Polio. He uses a wheelchair for mobility. He has a specially equipped van with a ramp that deploys out of the passenger side of his van.

1 2. Defendant Quartz Hill, LLC owned the real property located at or about
2 14044 Magnolia Street, Garden Grove California, in June 2018.

3 3. Defendant Quartz Hill, LLC owns the real property located at or about
4 14044 Magnolia Street, Garden Grove California, currently.

5 4. Defendant TTDU Corp owned Cafe De Thuong located at or about
6 14044 Magnolia Street, Garden Grove California, in June 2018.

7 5. Defendant TTDU Corp owns Cafe De Thuong restaurant
8 (“Restaurant”) located at or about 14044 Magnolia Street, Garden Grove
9 California, currently.

10 6. Plaintiff does not know the true names of Defendants, their business
11 capacities, their ownership connection to the property and business, or their
12 relative responsibilities in causing the access violations herein complained of,
13 and alleges a joint venture and common enterprise by all such Defendants.
14 Plaintiff is informed and believes that each of the Defendants herein,
15 including Does 1 through 10, inclusive, is responsible in some capacity for the
16 events herein alleged, or is a necessary party for obtaining appropriate relief.
17 Plaintiff will seek leave to amend when the true names, capacities,
18 connections, and responsibilities of the Defendants and Does 1 through 10,
19 inclusive, are ascertained.

20
21 **JURISDICTION & VENUE:**

22 7. This Court has subject matter jurisdiction over this action pursuant to
23 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
24 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

25 8. Pursuant to supplemental jurisdiction, an attendant and related cause
26 of action, arising from the same nucleus of operative facts and arising out of
27 the same transactions, is also brought under California’s Unruh Civil Rights
28 Act, which act expressly incorporates the Americans with Disabilities Act.

1 9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
2 founded on the fact that the real property which is the subject of this action is
3 located in this district and that Plaintiff's cause of action arose in this district.
4

5 **FACTUAL ALLEGATIONS:**

6 10. Plaintiff went to the Restaurant in June 2018 to eat.

7 11. The Restaurant is a facility open to the public, a place of public
8 accommodation, and a business establishment.

9 12. Parking spaces are one of the facilities, privileges, and advantages
10 offered by Defendants to patrons of the Restaurant.

11 13. Unfortunately, even though there were parking spaces marked and
12 reserved for persons with disabilities near the Restaurant during Plaintiff's
13 visit, the parking space next to the Restaurant was not van accessible.

14 14. The parking stalls measured 110 inches in width while the access aisle
15 measured about 58 inches in width. These are not van accessible.

16 15. In addition to not having a van-accessible parking space for persons with
17 disabilities near the Restaurant, the parking stalls and access aisles were not
18 level with each other. The parking stalls and access aisles had cross slopes and
19 running slopes greater than 2.1%.

20 16. Meanwhile, even though there are other parking spaces marked and
21 reserved for persons with disabilities who drive vans in the shopping center,
22 those parking spaces do not serve the Restaurant.

23 17. Indeed, if plaintiff wanted to use the other parking spaces marked and
24 reserved for persons with disabilities in the shopping center, he would have to
25 travel behind parked cars as well as travel with cars in the vehicular drive paths
26 to make it back to the Restaurant. This is not accessible to plaintiff.

27 18. Currently, the parking stalls and access aisles are not level with each
28 other.

1 19. Defendants have failed to maintain in operable working condition those
2 features of facilities and equipment that are required to be readily accessible to
3 and usable by persons with disabilities at the Subject Property.

4 20. Plaintiff personally encountered these barriers.

5 21. This inaccessible parking lot denied the plaintiff full and equal access
6 and caused him difficulty, discomfort, and embarrassment.

7 22. Transaction counters are another one of the facilities, privileges, and
8 advantages offered by Defendants to patrons of the Restaurant.

9 23. Meanwhile, and even though plaintiff did not personally confront the
10 barrier, the transaction counter at the Restaurant is more than 36 inches in
11 height. In fact, the transaction counter is 42 inches high.

12 24. There is no lowered, 36 inch portion of the transaction counter at the
13 Restaurant for use by persons in wheelchairs.

14 25. Paths of travel are another one of the facilities, privileges, and
15 advantages offered by Defendants to patrons of the Restaurant.

16 26. Even though the plaintiff did not personally confront the barriers, the
17 walkway leading to the entrance of the Restaurant has cross slopes of as much
18 as 5.5%. This is inaccessible to plaintiff.

19 27. The other two buildings on the property, meanwhile, have cross slopes
20 on the walkways that are above 2.1%.

21 28. Meanwhile, even though there were parking spaces ostensibly reserved
22 for persons with disabilities in other parts of the shopping center that plaintiff
23 did not confront, those parking spaces have cross slopes and running slopes
24 that are not accessible to persons with disabilities.

25 29. Indeed, not a single parking space had cross slopes and running slopes
26 that were below 2.1%.

27 30. Plaintiff plans to return and patronize the Restaurant but will be
28 deterred from visiting until the defendants remove the barriers.

1 31. The defendants have failed to maintain in working and useable
2 conditions those features required to provide ready access to persons with
3 disabilities.

4 32. The barriers identified above are easily removed without much
5 difficulty or expense. They are the types of barriers identified by the
6 Department of Justice as presumably readily achievable to remove and, in fact,
7 these barriers are readily achievable to remove. Moreover, there are numerous
8 alternative accommodations that could be made to provide a greater level of
9 access if complete removal were not achievable.

10 33. For example, there are numerous paint/stripe companies that will come
11 and stripe a level parking stalls and access aisles and install proper signage on
12 rapid notice, with very modest expense, sometimes as low as \$300 in full
13 compliance with federal and state access standards.

14 34. Another common barrier removal project is modifying transaction
15 counters to make a portion of the counter accessible. This is a simple
16 construction task, well within the capabilities of any general contractor. The
17 task can be completed easily and for a modest price.

18 35. Plaintiff is deterred from returning and patronizing the Restaurant
19 because of his knowledge of the barriers that exist. Plaintiff will, nonetheless,
20 return to assess ongoing compliance with the ADA and will return to patronize
21 the Restaurant as a customer once the barriers are removed.

22 36. Given obvious and blatant nature of the barriers and violations alleged
23 herein, the plaintiff alleges, on information and belief, that there are other
24 violations and barriers on the site that relate to his disability. Plaintiff will
25 amend the Complaint to provide proper notice regarding the scope of this
26 lawsuit once he conducts a site inspection. However, please be on notice that
27 the plaintiff seeks to have all barriers related to his disability remedied. See
28 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff

encounters one barrier at a site, he can sue to have all barriers that relate to his disability removed regardless of whether he personally encountered them).

I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990 (On behalf of plaintiff and against all defendants (42 U.S.C. section 12101, et seq.)

37. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint.

38. Under the ADA, it is an act of discrimination to fail to ensure that the privileges, advantages, accommodations, facilities, goods and services of any place of public accommodation is offered on a full and equal basis by anyone who owns, leases, or operates a place of public accommodation. See 42 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows:

- a. A failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the accommodation would work a fundamental alteration of those services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- b. A failure to remove architectural barriers where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are defined by reference to the ADAAG, found at 28 C.F.R., Part 36, Appendix "D."
- c. A failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs or to ensure that, to the

1 maximum extent feasible, the path of travel to the altered area and
2 the bathrooms, telephones, and drinking fountains serving the
3 altered area, are readily accessible to and usable by individuals
4 with disabilities. 42 U.S.C. § 12183(a)(2).

5 39. Any business that provides parking spaces must provide accessible
6 parking spaces. 1991 Standards § 4.1.2(5); 2010 Standards § 208. One in
7 every eight of those accessible parking spaces but not less than one must be a
8 “van” accessible parking space, i.e., having an eight foot access aisle. 1991
9 Standards § 4.1.2(5)(b). Under the 2010 Standards, one in every six accessible
10 parking spaces must be van accessible. 2010 Standards § 208.2.4.

11 40. Here, the lack of a van parking space near the Restaurant is a violation
12 of the law.

13 41. Under the 1991 Standards, parking spaces and access aisles must be
14 level with surface slopes not exceeding 1:50 (2%) in all directions. 1991
15 Standards § 4.6.3. Under the 2010 Standards, access aisles shall be at the
16 same level as the parking spaces they serve. Changes in level are not permitted.
17 2010 Standards 502.4. “Access aisles are required to be nearly level in all
18 directions to provide a surface for wheelchair transfer to and from vehicles.”
19 2010 Standards § 502.4 Advisory. No more than a 1:48 slope is permitted.
20 2010 Standards § 502.4.

21 42. Here the failure to provide level parking is a violation of the law.

22 43. Under the ADA, there must be at least one accessible route connecting
23 every building on the same site. 1991 Standards § 4.3.2(2); 2010 Standards §
24 206.2.2. Travel in the vehicular drive path with vehicles is not part of an
25 accessible route.

26 44. According to the California Building Code, it is not permissible to locate
27 handicap-accessible parking stalls in locations where a person with disability
28

1 is compelled to wheel or walk behind parked cars other than their own. CBC
2 1129B.3.3.

3 45. Here, the failure to provide an accessible route is a violation of the law.

4 46. Nowhere shall the cross slope of an accessible route exceed 2.1%. 1991
5 Standards §4.3.7. 2010 Standards § 403.3.

6 47. Here, the slopes along the walkways exceeded the levels allowed by law.

7 48. In areas used for transactions where counters have cash registers and
8 are provided for sales or distribution of goods or services to the public, at least
9 one of each type shall have a portion of the counter which is at least 36 inches
10 in length with a maximum height of 36 inches above the floor. 1991 Standards
11 § 7.2(1). Under the 2010 Standards, where the approach to the sales or service
12 counter is a parallel approach, such as in this case, there must be a portion of
13 the sales counter that is no higher than 36 inches above the floor and 36 inches
14 in width and must extend the same depth as the rest of the sales or service
15 counter top. 2010 Standards § 904.4 & 904.4.1.

16 49. Here, no such accessible counter has been provided in violation of the
17 ADA.

18 50. A public accommodation must maintain in operable working condition
19 those features of its facilities and equipment that are required to be readily
20 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

21 51. Here, the failure to ensure that the accessible facilities were available
22 and ready to be used by the plaintiff is a violation of the law.

23 52. Given its location and options, plaintiff will continue to desire to
24 patronize the Restaurant but he has been and will continue to be discriminated
25 against due to the lack of accessible facilities and, therefore, seeks injunctive
26 relief to remove the barriers.

1 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
 2 **RIGHTS ACT** (On behalf of plaintiff and against all defendants) (Cal Civ §
 3 51-53)

4 53. Plaintiff repleads and incorporates by reference, as if fully set forth
 5 again herein, the allegations contained in all prior paragraphs of this
 6 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
 7 that persons with disabilities are entitled to full and equal accommodations,
 8 advantages, facilities, privileges, or services in all business establishment of
 9 every kind whatsoever within the jurisdiction of the State of California. Cal.
 10 Civ. Code §51(b).

11 54. The Unruh Act provides that a violation of the ADA is a violation of the
 12 Unruh Act. Cal. Civ. Code, § 51(f).

13 55. Defendants’ acts and omissions, as herein alleged, have violated the
 14 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s
 15 rights to full and equal use of the accommodations, advantages, facilities,
 16 privileges, or services offered.

17 56. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
 18 discomfort or embarrassment for the plaintiff, the defendants are also each
 19 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
 20 (c).)

21
 22 **PRAYER:**

23 Wherefore, Plaintiff prays that this Court award damages and provide
 24 relief as follows:

25 1. For injunctive relief, compelling Defendants to comply with the
 26 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
 27 plaintiff is not invoking section 55 of the California Civil Code and is not
 28 seeking injunctive relief under the Disabled Persons Act at all.

1 2. Damages under the Unruh Civil Rights Act, which provides for actual
2 damages and a statutory minimum of \$4,000.

3 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
4 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

5
6 Dated: August 8, 2018

CENTER FOR DISABILITY ACCESS

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8
9 By:



10
11 Chris Carson, Esq.
12 Attorney for plaintiff
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